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FISCAL IMPACT STATEMENT

LS 6234

BILL NUMBER: SB 361

NOTE PREPARED: Dec 14, 2006

BILL AMENDED:

SUBJECT: Waiver of Counsel by Child.

FIRST AUTHOR: Sen. Howard

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill prohibits a child from waiving counsel unless certain criteria are met. It provides that if a child waives counsel, the court shall: (1) appoint standby counsel for the child; and (2) offer the child counsel at each later stage of a court proceeding.

Effective Date: July 1, 2007.

Explanation of State Expenditures: This bill could reduce the number of juveniles who are placed in Department of Correction (DOC) facilities as delinquents if standby counsel are available for these juveniles during court proceedings. In a recent report prepared by the National Juvenile Defender Center and Central Juvenile Defender Center Children's Law Center, almost 24% of 295 juveniles interviewed in Department of Correction juvenile facilities indicated that they were unrepresented by legal counsel.

The average per diem for juveniles in a DOC juvenile facility in FY 2006 was \$173 (\$63,139 ÷ 365) per day. Of this per diem, the county which committed the juvenile is responsible for \$60.

Explanation of State Revenues:

Explanation of Local Expenditures: This bill is estimated to result in added costs to counties of approximately \$405,000.

Under current law, juveniles who are defendants in CHINS status or delinquency cases may waive their rights to counsel in one of three ways:

1. an attorney retained or appointed for the juvenile knowingly and voluntarily joins in the waiver.
2. by the juvenile's parent, guardian, custodian or guardian ad litem.
3. by the juvenile if the juvenile is married or has been emancipated.

As proposed, the court would incur additional costs since:

- all juveniles would be required to have an attorney at the beginning of a case;
- the court would need to conduct an inquiry; and
- if the court waives the juvenile's right to counsel, the court shall appoint standby counsel for the juvenile.

The added costs associated with this bill will depend on how many additional hearings the courts would have to hold and the additional attorneys that the courts would have to appoint. The *Indiana Judicial Report* indicates that juveniles waived their right to counsel in 2,123, 2,335, and 2,697 cases respectively in CY 2003, CY 2004, and CY 2005. Assuming that one attorney would be paid two hours work for each case at \$75 per hour, the added costs to the courts would be \$404,550.

Estimated Cost for Providing Legal Representation for Juveniles Represented as Pro Se						
Number of Cases		Estimated Attorney Hours per Case		Cost Per Hour		Estimated Cost
2,697	x	2	x	\$75	=	\$404,550

Background: The *Indiana Judicial Report* provides the following information on the number of cases reported by courts where juveniles were offered an attorney at a hearing and the juvenile refused and acted on his or her own behalf.

Reported Cases Where Juveniles Waived Their Right to Counsel						
	CY 2003		CY 2004		CY 2005	
	When Juvenile Refused Attorney	Percent of All Cases Disposed	When Juvenile Refused Attorney	Percent of All Cases Disposed	When Juvenile Refused Attorney	Percent of All Cases Disposed
CHINS	397	5.5%	515	6.1%	1,039	12.9%
Delinquency	1,405	5.5%	1,524	6.5%	1,391	6.1%
Status	321	5.1%	296	5.1%	267	5.0%
Total	2,123	5.5%	2,335	6.2%	2,697	7.5%

Explanation of Local Revenues: Counties pay \$60 per diem for each juvenile housed in a DOC juvenile facility. See also *Explanation of State Expenditures*.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial Courts.

Information Sources: 2003, 2004, and 2005 *Indiana Judicial Reports*; *INDIANA: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings*, National Juvenile Defender Center and Central Juvenile Defender Center Children's Law Center, Inc., April 2006.

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